

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HENRY TUCKER, on behalf of himself and all others
similarly situated,

Plaintiff,

-v-

FIRSTLIGHT HOME CARE FRANCHISING, LLC,

Defendant.
-----X

18 Civ. 5012 (PAE) (KNF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Plaintiff Henry Tucker brings this action alleging violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 1201, *et seq.*, New York State Human Rights Law, New York Executive Law Article 15 and New York City Human Rights Law, New York City Administrative Code § 8-101 *et seq.*, by defendant Firstlight Home Care Franchising, LLC (“FirstLight”). Firstlight moved to dismiss Tucker’s First Amended Complaint for, *inter alia*, lack of personal jurisdiction. Before the Court is the June 10, 2019 Report and Recommendation of the Hon. Kevin Nathaniel Fox, United States Magistrate Judge, recommending that the Court grant the motion to dismiss. Dkt. 41 (“Report”). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has


been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Fox’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that “failure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review,” Report at 12, both parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*)).

CONCLUSION

For the foregoing reasons, the Court grants defendant’s motion to dismiss the First Amended Complaint. The Court respectfully directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: July 8, 2019
New York, New York